Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-992

AUSTIN MUTUAL INSURANCE COMPANY,
Appellant,

vs.

WILBUR GUDVANGEN, individually and as guardian ad litem of GAIL GUDVANGEN, a minor,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

MOTION OF APPELLEE TO DISMISS OR AFFIRM

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ON APPEAL FROM THE SUPREME COURT OF STATE OF MINNESOTA

MOTION OF APPELLEE TO DISMISS OR AFFIRM

The Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, respectfully moves this Honorable Court to dismiss the above entitled appeal or, in the alternative, to affirm the judgment of the Supreme Court of Minnesota on the following grounds:

1. The federal question sought to be reviewed was neither timely nor properly raised nor expressly passed on by the Supreme Court of Minnesota.

2. The appeal does not present a substantial federal question.

3. The judgment of the Supreme Court of Minnesota rests on an adequate nonfederal basis.

STATEMENT

This case originated as a declaratory judgment action in the District Court, Polk County, Minnesota, Ninth Judicial District. In that action, the Appellee, Wilbur Gudvangen, sought a declaration that his minor daughter was an insured entitled to uninsured motorist protection under the terms and conditions of an insurance policy issued to him by the Appellant, Austin Mutual Insurance Company. The Appellee's daughter was seriously injured in August 1975 in a collision between an automobile and a motorcycle on which she was riding as a passenger. The driver of the motorcycle was uninsured at the time of the accident.

On June 6, 1977, the District Court ruled that the policy of insurance did not extend to or include coverage of the Appellee's daughter while riding as a passenger on a motorcycle and denied uninsured motorist benefits under the terms of the policy. The District Court dismisssed the Appellee's complaint, and the Appellee filed an appeal to the Supreme Court of the State of Minnesota on June 8, 1977. In an opinion filed on May 26, 1978, the Minnesota Supreme Court reversed the decision of the Polk County District Court while holding that exclusion of motorcycles from coverage in the Appellant's policies was void, since the legislature required insurance against uninsured motorcycles.

The Appellant filed a petition for rehearing with the Minnesota Supreme Court, in which for the first time, the Appellant claimed that a 1977 amendment to the Minnesota uninsured motorist statute, as interpreted by the Minnesota Supreme Court, impaired its contractual rights in violation of article 1, § 10, clause 1 of the United States Constitution. In its opinion on rehearing, filed on September 7, 1979, the Minnesota Supreme Court briefly further explained the basis for its earlier decision while affirming that decision without addressing the Appellant's constitutional argument. On October 4, 1979, pursuant to title 28, §1257(2) of the *United States Code*, the Appellant filed this appeal to the Supreme Court of the United States.

QUESTIONS PRESENTED

1. Whether the Appellant's claim, that the 1977 amendment to *Minn. Stat.* §65B.49(4) (1976), as interpreted by the Minnesota Supreme Court, was an unconstitutional impairment of the Appellant's contractual rights, was timely and properly raised, and was expressly passed upon by the Minnesota Supreme Court.

2. Whether this appeal presents a substantial federal question such as is the prerequisite to the United States Supreme Court's exercise of its appellate jurisdiction.

3. Whether the judgment of the Minnesota Supreme Court is founded upon an adequate nonfederal basis so as to preclude its review by the United States Supreme Court.

ARGUMENT

I.

THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS NEITHER TIMELY NOR PROPERLY RAISED NOR EXPRESSLY PASSED ON BY THE SUPREME COURT OF MINNESOTA.

It is well settled that the Supreme Court of the United States is vested with no jurisdiction unless a federal question was raised and decided in the state court below. *Cardinale v. State of Louisiana,* 394 U.S. 437 (1969). The Appellant first raised the federal question concerning the alleged impairment of contractual obligations in its petition for rehearing. In its opinion on rehearing, the Minnesota Supreme Court explained the basis for its original decision, which concerned the proper interpretation and effect of an amendment to the Minnesota uninsured motorist statute. The court confined itself to this subject and did not expressly address the Appellant's new contention that the statute, as interpreted by the court, violated the contract clause in article 1, §10, clause 1 of the United States Constitution. The court's opinion on rehearing is reprinted here below in its entirety to indicate the absence of any discussion of the federal constitutional question sought to be reviewed in this appeal.

YETKA, Justice.

By way of further explanation for our earlier decision, we think it clear that in adopting the concept of no-fault insurance into the Minnesota statutes, the legislature intended no change in the law insofar as uninsured motorist insurance protection is concerned.

The statutes dealing with uninsured motorist insurance were intended to be incorporated intact. Since decisions of this court prior to no fault, cited in the main opinion, make it clear that the protection of the uninsured motorist statutes applied to persons and not vehicles, appellant would be covered.

The 1977 amendments to no fault added nothing to change the law, therefore, but reworded and clarified the statutes to comply with what the law already was as interpreted by earlier decisions of this court. Thus, there is really no question of retroactivity to be decided.

With this explanation, our earlier decision is affirmed.

(Appendix A, Appellant's Jurisdictional Statement, pp. 11-12).

The well-established rule is that the raising of a federal question for the first time in a petition for rehearing addressed to the highest state court is not sufficient to invoke the appellate jurisdiction of the United States Supreme Court, unless the state court actually entertains the petition and expressly decides the question. *Hanson v. Denckla,* 357 U.S. 235, 243-44, *rehearing denied,* 358 U.S. 858 (1958) (federal constitutional question not seasonably presented when raised for first time on motion for rehearing made to state court. therefore, federal Supreme Court would not determine the issue); *Radio Station WOW v. Johnson,* 326 U.S. 120, 128 (1944); *Herndon v. State of Georgia,* 295 U.S. 441, 443 (1935), *rehearing denied,* 296 U.S. 661 (1935); *American Surety Co. v. Baldwin,* 287 U.S. 156 (1932); *Citizens' National Bank of Cincinnati v. Durr,* 257 U.S. 99 (1921); *Simmerman v. Nebraska,* 116 U.S. 54 (1885).

When, as in the instant case, the federal question is first raised on a petition for rehearing to the highest state court, the denial of the petition for rehearing must be more than a cursory recitation that the petition was fully or maturely considered and accordingly denied if the state court's decision is to constitute a reviewable judgment. *Consolidated Turnpike Co. v. Norfolk and Ocean View Railway,* 228 U.S. 326, 333-34 (1910); *McCorquodale v. Texas,* 211 U.S. 432 (1908). The state court must have addressed itself explicitly to the federal question which was raised on the petition for rehearing before it will be deemed to have passed on the question. *See Radio Station WOW v. Johnson, supra,* 326 U.S. at 128.

The absence of any explicit treatment by the Minnesota Supreme Court of the federal question sought to be reviewed, coupled with the failure of the Appellant to raise that issue until its petition for rehearing, precludes the Appellant from now raising the issue before this Court. No federal question has been timely raised or expressly decided so as to warrant the exercise of the appellate jurisdiction of the United States Supreme Court.

II.

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

The only power of the United States Supreme Court over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. *Zacchini v. Scripps-Howard Broadcasting Co.,* 433 U.S. 562 (1977); *Herb v. Pitcairn,* 324 U.S. 117 (1944). Thus, the Supreme Court is wary of assuming jurisdiction of a case from a state

court unless it is plain that a substantial federal question is necessarily presented and the party seeking review before the Court must show that it has jurisdiction of the case. *Department of Mental Hygiene of California v. Kirchner,* 380 U.S. 194 (1965). It is essential to the Supreme Court's jurisdiction not only that the federal question be shown to exist but also that the state court judgment could not have been rendered without an actual decision on the federal question. *Southwestern Bell Telephone Co. v. Oklahoma,* 303 U.S. 206 (1938); *Lynch v. People of New York ex rel. Pierson,* 293 U.S. 52 (1934).

The Appellee submits that the judgment of the Supreme Court of Minnesota in this case was in no way founded upon considerations of federal questions. Neither in its original decision nor in its opinion on rehearing did the Supreme Court of Minnesota address the federal constitutional issue which the Appellant raised for the first time in its petition for a rehearing. Accordingly, the requisite substantial federal question is not present and this Court is without jurisdiction to hear this appeal. Where, as in the case at bar, the contract clause in the federal constitution was not relied on or discussed in the state court proceedings, no question under that clause is presented for review on appeal to the United States Supreme court. *Gibbes v. Zimmerman,* 290 U.S. 326 (1933).

In any case, the Appellant's reliance on the contract clause is misplaced. It is claimed by the Appellant that the 1977 amendment to Minnesota's uninsured motorist insurance statute, which clarified the point that motorcycles are within the definition of "uninsured motor vehicle," impairs its contractual obligations in violation of the contract clause. Implicit in this argument is the assertion, con-

trary to the Minnesota court's statement in its opinion on rehearing, that the 1977 amendment changed the law and was applied retroactively to the time of the accident in 1975. The Appellee disputes this interpretation of the decision of the Supreme Court of Minnesota and denies that such an interpretation, even if accepted, would sustain a constitutional claim based on impairment of contract. The contract clause does not prohibit the states from repealing or amending statutes generally or from enacting legislation with retroactive effects. *United States Trust Co. of New York v. New Jersey,* 431 U.S. 1 (1977). Moreover, the contract clause is not an absolute prohibition against any impairment of contracts, and the states retain broad power to adopt general regulatory measures without being concerned that private contracts will be impaired or even destroyed as a result. *Id.* at 22-23.

In *Hopkins v. McLure,* 133 U.S. 380 (1890), the appellant claimed the existence of a federal question by virtue of the fact that application of a subsequent statutory amendment would impair the obligation of its contract. The state supreme court had ruled that the amendment in question had not in fact changed the law but had merely stated the law as it had always been applied by earlier decisions of the court. Under such circumstances, the United States Supreme Court ruled that the state decision raised no federal question and that, accordingly, the writ of error was to be dismissed. *Id.* at 386. *See Palmer Oil Corp. v. Amerada Petroleum Corp.,* 343 U.S. 390 (1952) (appeals challenging constitutionality of Oklahoma oil and gas statute in part on ground of impairment of contract failed to raise any substantial federal question and would be dismissed). Similarly, the opinion on rehearing by the Minnesota Supreme Court concluded that the amendment in question merely clarified existing law, and thus no federal question was reached by the court.

The 1977 amendment to the Minnesota uninsured motorist statute precludes any further need to consider the questions presented in this appeal but for those cases, if any, within the state of Minnesota which involve similar fact situations arising between 1975 and the effective date of the 1977 amendment. Thus, the issues in this case concern only an extremely narrow class of persons and circumstances. Certiorari, which is an alternative basis for review asserted by the Appellant, should not be granted except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of authority among the federal courts of appeal. *Rice v. Sioux City Memorial Park Cemetery,* 349 U.S. 70 (1955); *Layne and Bowler Corp. v. Western Well Works,* 261 U.S. 387 (1923). The problems which are claimed to be of broad enough significance to give rise to a substantial federal question must be beyond the academic or the episodic. *Rice v. Sioux City Memorial Park Cemetery, supra,* 349 U.S. at 74. The Appellee respectfully submits that the questions sought to be reviewed in this appeal are unsubstantial both theoretically and in the scope of their practical effect on the public. Accordingly, no substantial federal question has been presented for review.

III.

THE JUDGMENT OF THE SUPREME COURT OF MINNESOTA RESTS ON AN ADEQUATE NONFEDERAL BASIS.

It is axiomatic that state court judgments will not be reviewed by the United States Supreme Court if they rest upon an adequate state ground. *Minnesota v. Andrews,* 419 U.S. 881 (1974); *Hammerstein v. Superior Court of California, In and For Los Angeles County,* 340 U.S. 622 (1951); *Brown v. Union Pacific Railway,* 267 U.S. 255 (1925). Moreover, if an independent nonfederal ground exists to support the state judgment, the United States Supreme Court is deprived of jurisdiction to review the judgment, even though the state decision was founded upon federal as well as nonfederal grounds. *Jankovich v. Indiana Toll Road Commission,* 379 U.S. 487 (1965); *Fay v. Noia,* 372 U.S. 391 (1963); *Cramp v. Board of Public Instruction of Orange County, Florida,* 368 U.S. 278 (1961); *Fox-Film Corp. v. Miller,* 296 U.S. 207 (1935). The importance of this jurisdictional principle is such that the Supreme Court has been said to be without jurisdiction to review the decision of a state court where the question of the existence of an adequate state ground for that decision is debatable or where it appears that the judgment might have rested upon a nonfederal ground. *Stembridge v. State of Georgia,* 343 U.S. 541 (1952); *Bachtel v. Wilson,* 204 U.S. 36 (1907).

The most cursory examination of the initial opinion and opinion on rehearing of the Minnesota Supreme Court in this case shows that the bases for that court's decision were exclusively nonfederal. (*See* Appendix A, Appellant's Jurisdictional Statement.) The issues on appeal to

that court were 1) whether the insurance policy issued by the Appellant provided coverage to the Appellee's insured so as to permit the Appellee to recover damages against the owner or operator of an uninsured motorcycle, and 2) whether *Minn. Stat. Ann.* §65B.49(4) (1976) required an insurer to provide uninsured motorist coverage for accidents under the circumstances of the case at bar. These issues are patently nonfederal in nature, and the Supreme Court of Minnesota relied exclusively upon state law in resolving them. Specifically, the court cited Minnesota authority concerning interpretation of the statutory requirements for uninsured motorist coverage to support its decision. In addition, in holding that the Appellee was covered under the Appellant's policy, the court relied upon Minnesota case law concerning the construction and effect of statutory amendments.

Aside from the Appellee's argument herein that no substantial federal question has been raised by this appeal, the fact remains that patently adequate state grounds exist as a foundation for the judgment of the Supreme court of Minnesota. For this reason, apart from and in addition to those asserted above, the Appellee submits that the Supreme Court of the United States lacks jurisdiction to review the judgment of the Supreme Court of Minnesota.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this appeal be dismissed or the decision of the Supreme Court of Minnesota be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 15 day of January, 1980, I have mailed a copy of this Motion to Dismiss or Affirm, postage prepaid, to Steven J. Cahill, 512 Center Avenue, P.O. Box 1077, Moorhead, Minnesota 56560, counsel for Appellant.

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